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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,602	03/01/2004	Lyndsay Williams	306985.01	9169
22971	7590	05/13/2008		
MICROSOFT CORPORATION ONE MICROSOFT WAY REDMOND, WA 98052-6399			EXAMINER BERTRAM, ERIC D	
			ART UNIT 3766	PAPER NUMBER
			NOTIFICATION DATE 05/13/2008	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/790,602

Applicant(s)

WILLIAMS ET AL.

Examiner

Eric D. Bertram

Art Unit

3766

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4-9, 12-17, 20-22 and 28-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4-9, 12-17, 20-22 and 28-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ ~~Notice of Informal Patent Application~~
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/23/2007 has been entered.
2. Furthermore, the Examiner apologizes for the delay in prosecution. As discussed with Attorney Aaron Chatterjee on 5/7/2008, there was an inadvertent Notice of Non-Compliance posted on the transaction history of the file in PAIR. This Notice has been removed/rescinded from the record.

Response to Arguments

3. Applicant's arguments filed 10/23/07 have been fully considered but they are not persuasive. Applicant argues that Ishibashi does not disclose an environmental sensor that monitors ambient conditions external to the wearer, such as ambient sound. This is simply not the case. As pointed out previously in paragraph 8 of the Final Rejection mailed on 5/23/2007, Ishibashi discloses a "microphone 22 that takes in sounds around the wearer" and voices of the wearer, too...Using this data, the controller 5 checks whether the wearer is speaking or not" (Col. 2, lines 57-60). Furthermore, by monitoring the ambient conditions external to the wearer, a capture condition may be found in step #10 that the user is not speaking.

4. The applicant continues to argue that Ishibashi does not disclose that detection of a capture condition followed by detection of a stable condition *causes* capture of an image by the camera. The applicant is directed to Col. 4, lines 21-40 and figure 4 of Ishibashi, where it is explained that if in step #10 the wearer is found not to be speaking by monitoring ambient conditions (i.e., the capture condition), and this is followed by a stable head condition in step #50 (i.e., a stable condition), this directly causes the operation mode to be set to high, which directly causes "a shooting instruction to be outputted to the video camera circuit" (Col. 4, lines 48 and 49). Therefore, Ishibashi distinctly disclose that the detection of a capture condition followed by the detection of a stable condition always causes capture of an image by the camera.
5. The 35 USC 103(a) rejections of claims 1, 4-9, 12-17, 20-22 and 28-33 are still considered proper.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
9. Claims 1, 4, 7-9, 12-15, 17, 20 and 28-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ishibashi (US 6,558,050) in view of Grosvenor et al. (US 2003/0025798, hereinafter Grosvenor). Ishibashi discloses a portable recall device 1 that is configured to be carried by a wearer as shown in figure 1. The device includes a camera, as well as a three dimensional head orientation detecting unit 4 (Col. 2, lines 30-56), and a "microphone 22 that takes in sounds around the wearer and voices of the wearer, too...Using this data, the controller 5 checks whether the wearer is speaking or not" (Col. 2, lines 57-60). In step #10 a capture condition is detected in that the wearer is found not to be speaking by monitoring ambient conditions (Col. 4, lines 21-40), and if this capture condition is followed by the detection of a stable head orientation by the head orientation detecting unit at step #50, then a shooting instruction is outputted to the video camera circuit (Col. 4, lines 48-49). However, Ishibashi is silent as to whether the head orientation detecting unit comprises at least one accelerometer

or a gyroscope. While the use of gyroscopes and/or accelerometers are notoriously old and well known in the art for detecting rotational/angular movement of an object, attention is directed to the secondary reference of Grosvenor, which discloses the use of one or more gyroscopes or accelerometers to measure movement of a camera that is attached to a user (par. 0068). Specifically, Grosvenor discloses the use of a plurality of accelerometers for detecting rotation along three axes (par. 0069). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the device of Ishibashi by using at least one gyroscope or accelerometer to detect angular/rotational movement since Grosvenor demonstrates that they would be fully capable of detecting the head orientation of a subject.

10. Regarding claims 4 and 20, Ishibashi discloses the audio data may be recorded in recording unit 12 (Col. 3, lines 15-18)

11. Regarding claims 7, 15 and 30, Ishibashi discloses in figure 4 that if a capture condition is detected at step #35 such that the quantity of change in pupil diameter is not lower than a predetermined level (which can be caused by a change in ambient lighting), then a stable condition detected at step #50 triggers the capture of an image (Col. 4, lines 29-31).

12. Regarding claim 9, Ishibashi discloses in figure 4 that if a capture condition is detected at step #25 such that the quantity of change in body temperature is not lower than a predetermined level (which can be caused by a change in ambient temperature), then a stable condition detected at step #50 triggers the capture of an image (Col. 4, lines 25-26).

13. Regarding claim 32, although Ishibashi is silent as to whether the method is stored on a computer readable medium, the controller would inherently need to be programmed in order to perform the method as described above. As is notoriously well known in the art, the use of a computer readable medium would be one such way of programming the controller.

14. Claims 5, 6, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ishibashi and Grosvenor in view of Horimoto (US 4,009,943). Ishibashi, as modified and described above, discloses the applicant's basic invention with the exception of using a wide-angle, fish-eye lens. However, the use and advantages of a wide-angle, fish-eye lens is notoriously old and well known in the art, as taught by Horimoto (Col. 1, lines 11-13). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the device of Ishibashi, as modified, by including a wide-angle, fish-eye lens in order to capture the true perspective of what the actual object would appear to an observer (Col. 1, lines 13-18).

15. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ishibashi and Grosvenor in view of Moultrie, Jr. (US 2002/0159770, hereinafter Moultrie). Ishibashi, as modified and described above, discloses the applicant's basic invention with the exception of the capture condition comprising detecting a change in the signal from a passive infrared detector triggered by heat from a person in the proximity of the camera. Attention is directed to the secondary reference of Moultrie, which discloses a camera that is activated by detecting a change in the signal from a passive infrared

detector triggered by heat from an animal in the proximity of the camera (see abstract). Therefore, it would have been obvious to one of ordinary skill in the art to modify the camera of Ishibashi, as modified, by adding capture condition detection with an infrared sensor as taught by Moultrie in order to make the system automatic and allow the user to take images of interest without having to be with the camera.

16. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ishibashi and Grosvenor in view of Shiozaki et al. (US 5,978,603, hereinafter Shiozaki). Ishibashi, as modified and described above, discloses the applicant's basic invention with the exception of the device being capable of playing digital media. However, attention is directed to the secondary reference of Shiozaki, which discloses a digital camera 1 that is capable of displaying digital media on a LCD display 4 (see figure 2). Therefore, it would have been obvious to replace the film camera of Ishibashi, as modified, with the art-recognized equivalent digital camera of Shiozaki in order to allow a user to preview images on the display and delete unwanted images without wasting film.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric D. Bertram whose telephone number is 571-272-3446. The examiner can normally be reached on Monday-Friday from 9:30-6 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl H. Layno can be reached on 571-272-4949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3766

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/E. D. B./
Examiner, Art Unit 3766

/Mark W Bockelman/
Primary Examiner, Art Unit 3766
May 8, 2008